

EXHIBIT 2

ROBINSON & WOOD

P.02/22

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Richardson & Wren, Inc.
237 North First Street
San Jose, CA 95113
(408) 294-7128

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GENERAL ALLEGATIONS

[Against All Cross-Defendants]

1. At all relevant times mentioned, Cross-Complainant was and is a business entity authorized to do business and doing business in the County of Santa Clara, State of California.

2. Cross-Complainant is informed and believes, and thereon alleges, that at all times herein mentioned, plaintiff is a California Non-profit Mutual Benefit Corporation, duly authorized and existing under and by virtue of the laws of the State of California.

3. Cross-Complainant is informed and believes, and thereon alleges, that each of the cross-defendants and the fictitiously named cross-defendants were duly organized and existing California corporations, partnerships, proprietorships, and/or other business entities authorized to do business and doing business in the State of California.

Cross-Complainant is further informed and believes, and thereon alleges, that each of the aforementioned cross-defendants were the inspectors, subcontractors, engineers, and/or designers responsible for inspecting, constructing and/or designing the structures and appurtenances of the Property.

4. Cross-Complainant does not know the true names or capacities of cross-defendants sued herein as Roes 1-25, inclusive, and will amend this cross-complaint to insert their true names and capacities when ascertained. Cross-Complainant is informed and believes, and thereon alleges, that each of said fictitiously named cross-defendants was negligent, careless, strictly liable, breached warranties, or were otherwise legally responsible for the happening of the events complained of in the plaintiff's complaint filed herein and any resulting injuries.

5. Cross-Complainant is informed and believes, and thereon alleges, that at all times herein mentioned, cross-defendants, and each of them, were corporations, partners, joint venturers, principals, agents, servants, employees and/or successors-in-interest of some, or all, of the other cross-defendants herein and were at all times relevant hereto,

1 acting within the course and scope of said corporation, partnership, joint venture, agency,
 2 employment or other aforesaid relationship. Cross-Complainant is further informed and
 3 believes that the wrongful acts of cross-defendants, and each of them, as hereinafter
 4 alleged, were ratified and authorized by their respective corporations, partners, joint
 5 venturers, principals, employers and predecessors-in-interest.

6 6. On or about September 14, 2004, plaintiff filed its complaint against
 7 Cross-Complainant. Said complaint, and any future amended complaints filed in this
 8 action are incorporated herein by reference as though fully set forth herein. Said
 9 incorporation by reference being solely for the purpose of identification,
 10 Cross-Complainant does not admit the truth of any allegations contained therein.
 11 Plaintiff's complaint sets forth various causes of action against Cross-Complainant and
 12 other parties, including, but not limited to, damages arising from negligence, breach of
 13 contract, and breach of warranty.

14 FIRST CAUSE OF ACTION

15 [Total Equitable Indemnity Against All Cross-Defendants]

16 7. Cross-Complainant hereby realleges and incorporates by reference each,
 17 every, and all allegations of Paragraphs 1 through 6, inclusive, of this cross-complaint as
 18 though fully set forth herein.

19 8. Cross-Complainant is informed and believes, and on that basis alleges, that
 20 at all times herein mentioned, the aforementioned cross-defendants, and each of them,
 21 were negligent in and about the matters referred to in plaintiff's complaint such that if
 22 there is any liability to plaintiff in this action, it is due to the negligence and liability of
 23 cross-defendants, and each of them, and not of Cross-Complainant.

24 9. Cross-Complainant is informed and believes, and based thereon alleges,
 25 that if Cross-Complainant is found liable to plaintiff or other cross-complainants in any
 26 amount, it will be due to the action of cross-defendants, and each of them, who were
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1 actively and/or passively negligent and primarily responsible for the damages of which
2 plaintiff complains.

3 10. If it is found that Cross-Complainant is liable by reason of those things set
4 forth herein, then Cross-Complainant is entitled to equitable indemnity, apportionment of
5 liability and contribution, for any and all liability among and from the aforesaid
6 cross-defendants, and each of them, according to their respective fault, for the injuries
7 and damages allegedly sustained by plaintiff, and/or other cross-complainants, by way of
8 sums paid in settlement, or judgment rendered against Cross-Complainant in the action
9 based upon plaintiff's complaint and/or on cross-complaints filed, or to be filed by others.
10 Such indemnification and/or contribution shall include any and all attorneys' fees and
11 court costs incurred by Cross-Complainant in the defense of plaintiff's complaint, or in
12 the defense of cross-complaints filed or to be filed herein. Cross-Complainant hereby
13 tenders its defense to cross-defendants, and each of them, and demands that they hold
14 Cross-Complainant harmless from and against the allegations of plaintiff's complaint
15 herein.

16 WHEREFORE, judgment is prayed as hereinafter set forth.

17 SECOND CAUSE OF ACTION

18 [Comparative Indemnity and Contribution Against All Cross-Defendants]

19 11. Cross-Complainant hereby realleges and incorporates by reference each,
20 every, and all allegations contained in Paragraphs 1 through 10, inclusive, of this
21 cross-complaint as though fully set forth herein.

22 12. Cross-Complainant denies any liability whatsoever to plaintiff and other
23 cross-complainants in connection with the matters alleged in plaintiff's complaint, or in
24 cross-complaints filed, or to be filed herein by others. Cross-Complainant further alleges
25 that, if held liable to plaintiff and/or any other cross-complainant, such liability was and is
26 the result, in total or in part, of the negligence, fault and/or other wrongful actions of the
27 aforesaid cross-defendants, and each of them.

13. If, in fact, it is determined that Cross-Complainant is not entitled to be fully indemnified by the aforesaid cross-defendants, and each of them, Cross-Complainant alleges that the aforesaid cross-defendants, and each of them, and other parties to this action, would be concurrent tortfeasors and that Cross-Complainant is entitled to obtain indemnity and/or contribution from the aforesaid cross-defendants, and each of them, on a comparative fault basis, the amount of said indemnity and contribution to be determined by the proportional degree, or allocation of proportionate fault of the aforesaid cross-defendants, and each of them.

14. Cross-Complainant hereby tenders its defense to cross-defendants, and each of them, and demands that cross-defendants defend, indemnify, and hold Cross-Complainant harmless.

WHEREFORE, judgment is prayed as hereinafter set forth.

THIRD CAUSE OF ACTION

[Negligence Against All Cross-Defendants]

15. Cross-Complainant hereby realleges and incorporates by reference each, every, and all allegations contained in Paragraphs 1 through 14, inclusive, of this cross-complaint as though fully set forth herein.

16. Cross-Complainant is informed and believes, and thereon alleges, that aforesaid cross-defendants, and each of them, negligently, carelessly, and wrongfully failed to use reasonable care in designing, constructing, manufacturing, inspecting, installing, grading, testing, maintaining, repairing, managing, monitoring, and building improvements on the Property and/or in providing services or materials to design and construct buildings and appurtenances on the Property as more fully described in plaintiff's complaint.

17. As a direct and proximate result of the negligence of the aforesaid cross-defendants, and each of them, as herein alleged, Cross-Complainant has incurred, and continues to incur, damages according to proof, costs and expenses, including, but

1 not limited to, litigation costs, attorneys' fees and consultants' fees to inspect, repair, and
2 mitigate damages arising out of said negligent services, inspection, design, construction,
3 repair, provision of materials, maintenance, and to defend against plaintiff's complaint
4 and/or other cross-complaints on file herein.

5 WHEREFORE, judgment is prayed and hereinafter set forth.

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7 **FOURTH CAUSE OF ACTION**

8 [Breach of Implied Warranty Against All Cross-Defendants]

9 18. Cross-Complainant hereby realleges and incorporates by reference each,
10 every and all allegations contained in Paragraphs 1 through 17, inclusive, of this
11 cross-complaint as though fully set forth herein.

12 19. Cross-Complainant is informed and believes, and thereon alleges, that each
13 of the aforesaid cross-defendants entered into agreements, whether written or oral, with
14 Cross-Complainant that provided that the aforesaid cross-defendants, and each of them,
15 would furnish all services, labor, and materials necessary, and would perform their work
16 in a reasonable and workmanlike manner.

17 20. Cross-Complainant is informed and believes, and thereon alleges, that the
18 aforesaid cross-defendants, and each of them, in surveying, testing, analyzing, designing,
19 verifying, preparing, manufacturing, inspecting, maintaining, installing, replacing,
20 repairing, grading, and constructing the structures and appurtenances on the Property, and
21 materials therefor, impliedly warranted that the various products, services, items,
22 structures and systems supplied, manufactured, assembled and/or designed, or constructed
23 by the aforesaid cross-defendants, and each of them, would be reasonably fit for the
24 purpose intended.

25 21. Cross-Complainant is informed and believes, and based thereon alleges,
26 that the surveying, designing, testing, verifying, analyzing, preparing, manufacturing,
27 maintaining, inspecting, installing, verifying, replacing, repairing, grading, and
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1 construction of the building and appurtenances on the Property, and materials therefor, by
 2 the aforesaid cross-defendants, and each of them, was deficient and not fit for the purpose
 3 intended and, in fact, aforesaid cross-defendants, and each of them, failed to perform the
 4 functions intended for each, and said malfunctions and inherent deficiencies have brought
 5 further damage to the Property as more fully set forth in plaintiff's complaint.

6 22. As a direct result of said deficient items, products, buildings, services and
 7 structures, Cross-Complainant has been damaged in an amount equal to any judgment
 8 rendered against it in the action because of work performed by aforesaid
 9 cross-defendants, and each of them, on the Property.

10 WHEREFORE, judgment is prayed as hereinafter set forth.

11 FIFTH CAUSE OF ACTION

12 [Breach of Express Warranty Against All Cross-Defendants
 13 and ROES 1 through 200, inclusive]

14 23. Cross-Complainant hereby realleges and incorporates by reference each,
 15 every, and all allegations contained in Paragraphs 1 through 22, inclusive, of this
 16 cross-complaint as though fully set forth herein.

17 24. Cross-Complainant is informed and believes, and thereon alleges, that
 18 Cross-Complainant entered into written contracts with cross-defendants, and each of
 19 them, either directly or as a third party beneficiary, whereby each cross-defendant agreed,
 20 for due consideration, to perform its work in a proper, efficient, and workmanlike
 21 manner.

22 25. Cross-Complainant is informed and believes, and thereon alleges, that the
 23 aforesaid cross-defendants, and each of them, in surveying, testing, analyzing, designing,
 24 verifying, preparing, manufacturing, inspecting, maintaining, installing, replacing,
 25 repairing, grading, and constructing the structures and appurtenances on the Property,
 26 expressly warranted that the various products, services, items, structures and systems
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1 supplied, manufactured, assembled and/or designed, or constructed by the aforesaid
 2 cross-defendants, and each of them, would be reasonably fit for the purpose intended.

3 26. Cross-Complainant is informed and believes, and thereon alleges, that the
 4 surveying, designing, testing, verifying, analyzing, preparing, manufacturing,
 5 maintaining, inspecting, installing, verifying, replacing, repairing, grading, and
 6 construction of the building and appurtenances on the Property by the aforesaid
 7 cross-defendants, and each of them, was deficient and not fit for the purpose intended
 8 and, in fact, aforesaid cross-defendants, and each of them, failed to perform the functions
 9 intended for each, and said malfunctions and inherent deficiencies have brought further
 10 damage to the Property as more fully set forth in plaintiff's complaint.

11 27. As a direct result of said deficient items, products, buildings, services, and
 12 structures, cross-complainant has been damaged in an amount according to proof.

13 WHEREFORE, judgment is prayed as hereinafter set forth.

14 SIXTH CAUSE OF ACTION

15 [Express Contractual Indemnity Against All Cross-Defendants
 16 and Roes 1-200, inclusive]

17 28. Cross-Complainant hereby realleges and incorporates by reference each,
 18 every, and all allegations contained in Paragraphs 1 through 27, inclusive, of this
 19 Cross-Complaint as though fully set forth herein.

20 29. Cross-Complainant is informed and believes, and thereon alleges, that
 21 Cross-Complainant entered into written contracts with cross-defendants, and each of
 22 them, either directly or as a third party beneficiary, whereby each cross-defendant agreed,
 23 for due consideration, to indemnify and save Cross-Complainant harmless from and
 24 against any liability and all loss, costs, damages, expenses, including attorneys' fees, on
 25 account of any claims resulting from injury to or death sustained by any person (including
 26 subcontractor's employees) or damage to property of any kind, which injury, death or
 27 damage arises out of or is in any way connected with the performance of work under the
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1 subcontract, excepting any such matters caused solely and exclusively by the sole
2 negligence or the sole willful misconduct of Cross-Complainant.

3 30. Cross-Complainant has performed all the conditions and obligations on its
4 part under each of the said subcontracts.

5 31. Cross-defendants, and each of them, are required to defend, indemnify and
6 hold harmless Cross-Complainant with regard to the claims made by plaintiff in the
7 complaint.

8 32. As a result of the negligence, breach of contract, fault, or responsibility of
9 cross-defendants, and each of them, as hereinabove alleged, Cross-Complainant has been
10 required and has expended, or may be required to and will expend, substantial amounts in
11 defending against the complaint and in settlement and satisfaction of any judgment or
12 settlement.

13 33. Cross-Complainant is entitled to indemnification from cross-defendants,
14 and each of them, for all otherwise recoverable fees, expenses, costs, consultant fees,
15 expert fees, and attorneys' fees, incurred in connection with this suit, as well as all
16 damages resulting from cross-defendants' breach of their contractual responsibilities.

17 34. Cross-Complainant hereby tenders its defense to cross-defendants, and each
18 of them, and demands that cross-defendants defend, indemnify, and hold
19 Cross-Complainant harmless.

20 WHEREFORE, judgment is prayed as hereinafter set forth.

21 **SEVENTH CAUSE OF ACTION**

22 [Breach of Contract Against All Cross-Defendants, and Roes 1 through 200, inclusive]

23 35. Cross-complainant realleges and incorporates herein by reference
24 paragraphs through of the Cause of Action as though fully set forth herein.

25 36. Cross-complainant and cross-defendants entered into a written contract
26 concerning the property more particularly described in plaintiffs' First Amended
27 Complaint. Pursuant to the contract, cross-defendants were to construct the Project
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1 pursuant to the plans and specifications and according to applicable Building Codes.
 2 Cross-Defendants were also to name Cross-Complainant as an additional insured on their
 3 insurance policy. Cross-complainant is informed and believes that cross-defendants, and
 4 each of them, breached their contractual obligations by failing to properly perform their
 5 duties and obligations to construct the project pursuant to the contract documents and to
 6 name Cross-complainant as an additional insured.

7 37. Cross-complainant is informed and believes and thereon alleges that
 8 cross-defendants have breached their contractual duty.

9 38. Cross-complainant is informed and believes and thereon alleges that the
 10 injuries allegedly suffered by plaintiff, as enumerated in the main complaint, were a
 11 foreseeable result of the breach of the aforementioned stipulation and that all damages
 12 due plaintiff flow from said breach.

13 39. That cross-complainant has retained attorneys to defend him in plaintiff's
 14 action and has incurred attorney's fees and other foreseeable defense costs due to said
 15 breach, all to cross-complainant's damage in amounts not yet ascertained and
 16 cross-complainant prays leave to amend to plead these amounts of said defense when they
 17 have been ascertained.

18 EIGHTH CAUSE OF ACTION

19 [Declaratory Relief Against All Cross-Defendants]

20 40. Cross-Complainant hereby realleges and incorporates by reference, each,
 21 every, and all allegations contained in Paragraphs 1 through 39, inclusive, of this
 22 cross-complaint as though fully set forth herein.

23 41. A dispute has arisen, and an actual controversy now exists between
 24 Cross-Complainant and the aforesaid cross-defendants, and each of them, in that
 25 Cross-Complainant contends that it is entitled to equitable indemnity, total indemnity,
 26 express indemnity, and/or comparative indemnity and/or contribution, while the aforesaid
 27 cross-defendants, and each of them, deny such obligations.
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1 42. Cross-Complainant believes that the aforesaid cross-defendants, and each of
2 them, are obligated to indemnify and protect Cross-Complainant against claims and
3 liabilities asserted by plaintiff and other cross-complainants herein, including, but not
4 limited to, indemnification for attorneys' fees and costs of suit herein, and the aforesaid
5 cross-defendants, and each of them, dispute and deny said obligation.

6 43. Cross-Complainant desires a judicial determination of their respective rights
7 and of the duty of the aforesaid cross-defendants, and each of them, with respect to the
8 damages and other relief claimed in plaintiff's complaint and/or in cross-complaints filed,
9 or to be filed, by others herein. In particular, Cross-Complainant desires a declaration of
10 the respective liabilities of Cross-Complainant and the aforesaid cross-defendants, and
11 each of them, for such damages, if any, and a declaration of the aforesaid
12 cross-defendants' respective responsibilities to indemnify Cross-Complainant for the sums
13 which Cross-Complainant may be compelled to pay, and for which the aforesaid
14 cross-defendants, and each of them, or any of them, have been determined responsible, as
15 well as for attorneys' fees and costs of suit incurred by Cross-Complainant in this action.

16 44. Such a declaration is necessary and proper at this time in order that
17 Cross-Complainant may ascertain its rights and duties with respect to the claims of
18 plaintiff and other cross-complainants herein. Further, the claims of plaintiff and/or the
19 claims of other cross-complainants arise out of the same transaction, or series of
20 transactions. A determination of the several sets of claims in one proceeding is necessary
21 and appropriate in order to avoid a multiplicity of actions that would result if
22 Cross-Complainant were required to defend the claims of plaintiff and/or other
23 cross-complainants, and then to bring a separate action against the aforesaid
24 cross-defendants, and each of them, for such indemnification of sums which
25 Cross-Complainant may be compelled to pay as a result of any damages, judgments, or
26 other awards recovered by plaintiff, or other cross-complainants against
27 Cross-Complainant in this action.

WHEREFORE, Cross-Complainant prays for judgment as follows:

1. For a determination that cross-defendants, and each of them, are required to defend, indemnify, and hold Cross-Complainant harmless from any and all damages, liability, judgment, losses, including, but not limited to, court costs and attorneys' fees incurred by Cross-Complainant in the defense of plaintiff's action or other actions filed by other cross-complainants;
2. For a declaration from this Court that in the event that plaintiff, or other cross-complainants, recover judgment against Cross-Complainant, the court and jury should apportion fault between Cross-Complainant and aforesaid cross-defendants, and each of them, based upon a comparison of fault between Cross-Complainant and cross-defendants, and each of them, and declare the relative responsibility of Cross-Complainant and cross-defendants, and each of them, for contribution based on their percentage degree of fault.
3. For compensatory damages according to proof;
4. For the costs of suit incurred herein;
5. For attorneys' fees from such cross-defendants whose subcontracts with Cross-Complainant provide for same; and,
6. For such other and further relief as the Court may deem just and proper.

DATED: 10/28/04

ROBINSON & WOOD, INC.

By: 

DAVID S. HENNINGSEN, ESQ.
JONATHAN M. KING, ESQ.
Attorneys for BDM CONSTRUCTION
COMPANY, INC.

PROOF OF SERVICE

Robert Mondavi Winery vs. BDM Construction, et al.
Napa County Superior Court Action No.: 26-26808

I, Maggie Le, declare:

I am a citizen of the United States and a resident of the County of Santa Clara. I am over the age of eighteen (18) years and not a party to the within entitled action. I am employed by Robinson & Wood, Inc., 227 North First Street, San Jose, California, 95113, in the office of a member of the bar of this court at whose direction the service was made. I am readily familiar with Robinson & Wood, Inc.'s practice for collection and processing of documents for delivery by way of the service indicated below:

- (X) [BY MAIL] By consigning such copy in a sealed envelope, First Class postage fully prepaid, in the United States Postal Service for collection and mailing
- () [BY OVERNIGHT DELIVERY] By consigning such copy in a sealed envelope to an overnight courier for next business day delivery
- () [BY HAND-DELIVERY] BY consigning such copy in a sealed envelope to a messenger for guaranteed hand-delivery
- () [BY FACSIMILE TRANSMISSION] By consigning such copy to a facsimile operator for transmittal

On October 29, 2004, in accordance with ordinary business practices at Robinson & Wood, Inc., I caused to be served the within **BDM CONSTRUCTION COMPANY, INC.'S CROSS-COMPLAINT** in the manner identified above on the person(s) listed below:

PLEASE SEE ATTACHED LIST

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 29, 2004, at San Jose, California.


Maggie Le

1 Adriana C. Moore
2 Julian J. Hubbard Attorneys for
3 McCloskey, Hubbard, Ebert & Moore, LLP PLAINTIFF ROBERT MONDAVI
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